

HOUSE BILL REPORT

HB 2877

As Reported by House Committee On:
Children & Family Services

Title: An act relating to guardianship of dependent children.

Brief Description: Revising provisions relating to guardianship of dependent children.

Sponsors: Representatives Kagi and Boldt; by request of Department of Social and Health Services.

Brief History:

Committee Activity:

Children & Family Services: 2/4/04, 2/5/04 [DPS].

Brief Summary of Substitute Bill

- Eliminates dependency guardianships and defines a new category of guardianship.
- Establishes when guardianships are the preferred permanent plan, guidelines for the creation of the guardianship, qualifications for guardians, rights and duties of guardians, financial support of guardians, and the modification and termination of guardianship orders.

HOUSE COMMITTEE ON CHILDREN & FAMILY SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Kagi, Chair; Darneille, Vice Chair; Boldt, Ranking Minority Member; Roach, Assistant Ranking Minority Member; Bailey, Dickerson, Miloscia, Pettigrew and Shabro.

Staff: Sonja Hallum (786-7092).

Background:

Dependency Background:

If there are allegations of abandonment, abuse or neglect, or no parent who is capable of caring for a child, the State may investigate the allegations and initiate a dependency proceeding in juvenile court. If the court finds the statutory requirements have been met, the court will find the child to be a dependent of the State.

Whenever the court orders a dependent child to be removed from the home, the Department of Social and Health Services (Department) is required to provide the court with a permanent plan for the child. The permanent plan will contain the desired goal for the child which may include a plan to return the child home, adoption, long-term placement, or guardianship, including a dependency guardianship.

Definition of Dependency Guardianship:

A dependency guardian is a person, nonprofit corporation, or Indian tribe appointed by the court to assist the court in supervision of the dependency.

Creation of a Dependency Guardianship:

Any party to the dependency may petition the court to request a dependency guardianship be created.

The court will hold a hearing and may establish a dependency guardianship if the court finds the following:

1. The child has been found to be a dependent child;
2. A dispositional order has been entered in the dependency;
3. The child has been removed from the parent's home for six months pursuant to the dependency;
4. Services have been offered to correct the parental deficiencies;
5. There is little likelihood the parental deficiencies will be corrected so the child may be returned home; and
6. A guardianship is in the best interest of the child rather than a termination of parental rights or returning the child to the parent's home.

Qualifications for a Dependency Guardian:

Any person who is over the age of 21, any nonprofit corporation, or any Indian tribe, who meets the qualifications under the statutes relating to criminal background checks and suitability for the care of children may be appointed a guardian. The preferences of the child's parents should also be considered.

Rights and Duties of the Dependency Guardian:

If the court orders a dependency guardianship, the court will enter an order which contains the following:

1. The appointment of a person or agency to act as the dependency guardian;
2. The dependency guardian's rights and responsibilities, including rights to make decisions regarding finances, health, education, discipline, and social issues, but not the authority to consent to adoption;
3. The frequency of visitation between the parent and child; and
4. The extent of any continued future involvement by the supervising agency.

Continuation of the Dependency:

Under a dependency guardianship the underlying dependency continues, but review hearings are only required by order of the court.

Financial Support of Dependency Guardianships:

Establishment of a dependency guardianship does not preclude the dependency guardian from continuing to receive foster care payments.

Modification and Termination of the Dependency Guardianship:

Any party may request to modify or terminate a dependency guardianship order. The Department may initiate a modification or termination proceeding, or intervene in a proceeding, even if it was not a party to the dependency guardianship.

The court will grant the order if the court finds by a preponderance of the evidence that there has been a substantial change of circumstances which occurred after the dependency guardianship was established and that it is in the best interest of the child to modify or terminate the dependency guardianship.

If an order terminating the guardianship is granted, the dependency guardian no longer has any rights or responsibilities toward the child and the child remains dependent. The court will either return the child home to the parent or place the child into the custody, control, and care of the Department, or licensed child-placing agency, for placement in a foster home or in group care.

Summary of Substitute Bill:

Effect on Current Dependency Guardianships:

Dependency guardianships are eliminated. However, any dependency guardianships existing at the time of the effective date of the Act will remain in effect unless the dependency guardian and the Department agree the dependency guardianship should be converted to a guardianship.

Definition of Guardianship:

The definition of "guardian" is changed. The revised definition of guardian includes any person or agency that has been appointed a guardian in a proceeding, including a guardian appointed under the dependency and termination of parental rights statutes, who has legal right to custody of the child. However, guardian under this definition does not include a guardian appointed under the probate and trust law statutes.

Guardianship as a part of the Permanent Plan:

Guardianship must be the preferred permanency plan for the child when return to the home or adoption is not an appropriate plan, and the court finds:

1. The child retains a bond with the child's parent and maintenance of that bond is in the best interests of the child; and
2. The child is at least 12 but less than 18 years old, and termination of the parent-child relationship and adoption is not suitable; or
3. The child is less than 12 years old and the guardian is related to the child and has made a long-term commitment to care for the child; and
4. Ongoing involvement of the Department or another agency to supervise the placement of the child or provide services beyond guardianship subsidies and benefits or incentives authorized is not required.
5. The court may also consider additional factors such as whether the proposed guardianship meets the familial and cultural needs of the child, whether the child has expressed a preference for guardianship, and whether the placement of the siblings with the same guardian is in the best interest of the siblings, regardless of their age.

Creation of a Guardianship:

Any party to the dependency may petition the court to request a guardianship be created. The court will hold a hearing and may establish a guardianship if the court finds the following:

1. The child has been found to be a dependent child;
2. A dispositional order has been entered in the dependency;
3. The child has been removed from the parent's home for six months pursuant to the dependency;
4. Services have been offered to correct the parental deficiencies;
5. There is little likelihood the parental deficiencies will be corrected so the child may be returned home;
6. The guardian has signed a statement acknowledging the guardian's rights and responsibilities toward the child, and has agreed to accept the commitment to care for the child until the child reaches age 18;
7. Guardianship is a more reasonable or appropriate option for the child than adoption; and
8. A guardianship is in the best interest of the child rather than a termination of parental rights or returning the child to the parent's home.

In determining whether a guardianship is in the best interest of the child, in addition to the factors listed above, the court will consider the following:

1. Whether a relationship continues to exist between the child and the child's parent or parents;
2. The relationship of the proposed guardian to the child;
3. The nature of the child's relationship with siblings and the extent to which the guardianship will facilitate those relationships; and
4. If the child is an Indian child, the position of the child's tribe regarding the guardianship.

A guardianship may only be established for a child under the age of 12, or a child for whom the parent-child relationship has been legally terminated, if a court determines that

exceptional circumstances exist and that a guardianship is in the child's best interests. The finding of exceptional circumstances is not required if the proposed guardian is related to the child and has promised to provide long-term care for the child. Exceptional circumstances may include:

1. A child under age 12 who is difficult to place or has special needs has a suitable guardian willing to take custody of the child;
2. A child age 14 to 17 for whom parental rights have been terminated who does not consent to adoption; and
3. Establishment of a guardianship will allow the child to be placed, or to maintain contact, with siblings to an extent unlikely to be achieved through other permanency options.

Indian Child Welfare Act:

The guardianship petition must contain a statement alleging whether the child is an Indian child as defined by the Indian Child Welfare Act (ICWA). Every order or decree entered in any proceeding under the dependency and termination of parental rights chapter must contain a finding the ICWA does or does not apply. If the ICWA does apply the order must contain a finding that all notice requirements and evidentiary requirements under the ICWA have been satisfied.

Qualifications for a Guardian:

Any suitable person who is over the age of 21 who meets the qualifications under the statutes relating to criminal background checks and suitability for the care of children may be appointed a guardian. The preferences of the child's parents should also be considered.

Before the court appoints a guardian, the Department, a private agency, or the child's tribe if the child is an Indian child, must have available in its files or shall complete a satisfactory home study of the proposed guardian and those persons age 16 and older residing in the proposed guardian's home. The home study shall include a criminal background check. The Department is only required to complete the home study if the Department is currently providing services to the child or prospective guardian.

Rights and Duties of the Guardian:

If the court orders a guardianship, the court will enter an order which contains the following:

1. Establishment of the guardianship and dismissal of the dependency;
2. Appointment of a person or agency to act as the guardian;
3. The guardians rights and responsibilities, including rights to make decisions regarding finances, health, education, discipline, and social issues;
4. The frequency and type of contact between the parent and child, and between the child and siblings; and
5. The requirement that the guardian must notify the court before moving out of state with the child.

The court does not have the authority to order the Department to supervise or provide services to the guardian or the child.

Continuation of the Dependency:

Under a guardianship the underlying dependency is dismissed. There are no review hearings.

Financial Support of Guardianships:

The Department may provide subsidies for guardianships. The Department is required to establish rules for the rates and eligibility of the subsidy that include, but not be limited to, the child's custodian who is receiving Temporary Assistance for Needy Families (TANF) or foster care payments from the Department to meet the child's needs.

Modification and Termination of the Guardianship:

Any party may request to modify or terminate a guardianship order under the dependency and termination of parental rights chapter. The Department may not initiate a modification or termination proceeding, or intervene in a proceeding, if it was not a party to the guardianship proceeding.

The court will hold a hearing on the motion to modify or terminate the guardianship. The court will grant the order to modify the guardianship if the court finds by a preponderance of the evidence that the modification is in the best interest of the child.

The guardianship will be terminated if the court finds by a preponderance of the evidence that based on facts that have arisen since entry of the guardianship order, a substantial change has occurred in the circumstances of the guardian and that the termination is in the best interest of the child.

If the order is granted the court will either return the child home to the parent or place the child into the custody, control, and care of a substitute guardian. The court may only place the child in shelter care or other out of home care if a dependency petition has been filed and is pending before the court.

Substitute Bill Compared to Original Bill:

The substitute bill clarifies that a guardian under the dependency and termination of parental rights statutes does not include a guardian under the probate statutes. If the Department and the guardian in a dependency guardianship existing at the time of the act both agree to the conversion of the dependency guardianship to a guardianship, the court may order the conversion.

The substitute bill defines when guardianship will be the preferred placement plan for a child. The requirement that in order for a guardianship to be established, adoption must not be available, or a reasonable option is changed to state that guardianship is a more reasonable option for the child than adoption. The criteria the court is to consider in determining whether a guardianship is in the best interest of the child is reorganized within the statutes.

The ages at which a guardianship may be ordered are changed. The substitute bill specifies the criteria when a guardianship may be ordered for a child under the age of 12, or a child for whom parental rights have been terminated, to only permit guardianships for these children under exceptional circumstances or if the guardian is a relative who has agreed to care for the child.

The substitute bill removes the ability of the Department to intervene or initiate a modification or termination proceeding if the Department was not previously a party to the guardianship.

The requirement that in order to receive a subsidy the guardian must be receiving Temporary Assistance for Needy Families (TANF) or foster care payments is changed to allow a subsidy to a person other than only a person receiving TANF or foster care payments.

The substitute bill makes numerous technical corrections. Remaining references to dependency guardianships are removed and replaced with language referencing guardianship.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 6, 2004.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) The Department has requested this legislation to deal with several problems it has seen with dependency guardianships. The legislation has attempted to resolve concerns raised by those involved with dependency guardianships. The remaining issue is around services and the Department will deal with them fairly.

(With concerns) We are concerned about the effect it will have on extended families, especially families of color because they won't be able to take kids long-term without services for the child. We have seen the Department threaten to take a child if the family doesn't agree to adoption and this may be used to encourage families to adopt. This may also discourage families from taking special needs children. What this does is eliminate one possible recommendation of the court. A dependency guardianship allows a CASA to stay involved and this eliminates the CASA's involvement because the dependency is dismissed. This issue is big and complex and one of the problems is that it is moving so fast that there isn't time to look at the changes. It is hard for people to see this a budget neutral. The subsidies are optional under the bill. We would like to see guardianship subsidies at the same level as adoption. It gets the Department out of people's lives and creates the possibility of a greater subsidy. This maintains another category that looks more like nonparental custody.

Testimony Against: None.

Persons Testifying: (In support) Uma Ahluwalia, Department of Social and Health Services.

(With concerns) Sherry Appleton, Washington Defender Association and Washington Association of Criminal Defense Lawyers; John Stout, Washington State Court Appointed

Special Advocates; Janet Helson, Columbia Legal Services; and Laurie Lippold, Children's Home Society.

Persons Signed In To Testify But Not Testifying: None.